

**ASSEMBLY BILL**

**No. 365**

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**Introduced by Assembly Member Mullin**

February 14, 2013

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An act to amend Sections 273 and 2025.510 of the Code of Civil Procedure, and to amend Section 69957 of the Government Code, relating to court reporting.

LEGISLATIVE COUNSEL'S DIGEST

AB 365, as introduced, Mullin. Court reporting.

Existing law provides that the report of the official court reporter or official court reporter pro tempore, of any court, duly appointed and sworn, when transcribed and certified as being a correct transcript of the testimony and proceedings in the case, is prima facie evidence of that testimony and proceeding.

This bill would require that the report be transcribed and certified by a certified shorthand reporter, as defined, in order to qualify as prima facie evidence of that testimony and proceeding.

Existing law requires that, unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. If testimony at the deposition is recorded both stenographically, and by audio or video technology, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

This bill would clarify that the testimony recorded stenographically at the deposition is recorded by a certified shorthand reporter, as defined.

Existing law authorizes a court to order the use of electronic recording of an action or proceeding where an official reporter or an official reporter pro tempore is unavailable to report an action or proceeding

in a court in a limited civil case, a misdemeanor case, or an infraction case, as prescribed. A transcript derived from an electronic recording is authorized to be utilized whenever a transcript of court proceedings is required.

This bill would require that the electronic recording be transcribed by a certified shorthand reporter, as defined, in order to be utilized whenever a transcript of court proceedings is required.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 273 of the Code of Civil Procedure, as  
2 amended by Section 1 of Chapter 87 of the Statutes of 2009, is  
3 amended to read:

4 273. (a) The report of the official reporter, or official reporter  
5 pro tempore, of any court, duly appointed and sworn, when  
6 transcribed and certified *by a certified shorthand reporter*, as being  
7 a correct transcript of the testimony and proceedings in the case,  
8 is prima facie evidence of that testimony and proceedings.

9 (b) The report of the official reporter, or official reporter pro  
10 tempore, of any court, duly appointed and sworn, when prepared  
11 as a rough draft transcript, shall not be certified and cannot be  
12 used, cited, distributed, or transcribed as the official certified  
13 transcript of the proceedings. A rough draft transcript shall not be  
14 cited or used in any way or at any time to rebut or contradict the  
15 official certified transcript of the proceedings as provided by the  
16 official reporter or official reporter pro tempore. The production  
17 of a rough draft transcript shall not be required.

18 (c) The instant visual display of the testimony or proceedings,  
19 or both, shall not be certified and cannot be used, cited, distributed,  
20 or transcribed as the official certified transcript of the proceedings.  
21 The instant visual display of the testimony or proceedings, or both,  
22 shall not be cited or used in any way or at any time to rebut or  
23 contradict the official certified transcript of the proceedings as  
24 provided by the official reporter or official reporter pro tempore.

25 (d) *For purposes of this section, "certified shorthand reporter"*  
26 *has the same meaning as Section 8018 of the Business and*  
27 *Professions Code.*

28 (d)

1 (e) This section shall remain in effect only until January 1, 2017,  
2 and as of that date is repealed, unless a later enacted statute, that  
3 is enacted before January 1, 2017, deletes or extends that date.

4 SEC. 2. Section 273 of the Code of Civil Procedure, as added  
5 by Section 2 of Chapter 87 of the Statutes of 2009, is amended to  
6 read:

7 273. (a) The report of the official reporter, or official reporter  
8 pro tempore, of any court, duly appointed and sworn, when  
9 transcribed and certified *by a certified shorthand reporter*, as being  
10 a correct transcript of the testimony and proceedings in the case,  
11 is prima facie evidence of that testimony and proceedings.

12 (b) The report of the official reporter, or official reporter pro  
13 tempore, of any court, duly appointed and sworn, when prepared  
14 as a rough draft transcript, shall not be certified and cannot be  
15 used, cited, distributed, or transcribed as the official certified  
16 transcript of the proceedings. A rough draft transcript shall not be  
17 cited or used in any way or at any time to rebut or contradict the  
18 official certified transcript of the proceedings as provided by the  
19 official reporter or official reporter pro tempore. The production  
20 of a rough draft transcript shall not be required.

21 (c) *For purposes of this section, "certified shorthand reporter"*  
22 *has the same meaning as Section 8018 of the Business and*  
23 *Professions Code.*

24 (e)

25 (d) This section shall become operative on January 1, 2017.

26 SEC. 3. Section 2025.510 of the Code of Civil Procedure is  
27 amended to read:

28 2025.510. (a) Unless the parties agree otherwise, the testimony  
29 at any deposition recorded by stenographic means shall be  
30 transcribed.

31 (b) The party noticing the deposition shall bear the cost of that  
32 transcription, unless the court, on motion and for good cause  
33 shown, orders that the cost be borne or shared by another party.

34 (c) Notwithstanding subdivision (b) of Section 2025.320, any  
35 other party or the deponent, at the expense of that party or  
36 deponent, may obtain a copy of the transcript.

37 (d) If the deposition officer receives a request from a party for  
38 an original or a copy of the deposition transcript, or any portion  
39 thereof, and the full or partial transcript will be available to that  
40 party prior to the time the original or copy would be available to

1 any other party, the deposition officer shall immediately notify all  
2 other parties attending the deposition of the request, and shall,  
3 upon request by any party other than the party making the original  
4 request, make that copy of the full or partial deposition transcript  
5 available to all parties at the same time.

6 (e) Stenographic notes of depositions shall be retained by the  
7 reporter for a period of not less than eight years from the date of  
8 the deposition, where no transcript is produced, and not less than  
9 one year from the date on which the transcript is produced. Those  
10 notes may be either on paper or electronic media, as long as it  
11 allows for satisfactory production of a transcript at any time during  
12 the periods specified.

13 (f) At the request of any other party to the action, including a  
14 party who did not attend the taking of the deposition testimony,  
15 any party who records or causes the recording of that testimony  
16 by means of audio or video technology shall promptly do both of  
17 the following:

18 (1) Permit that other party to hear the audio recording or to view  
19 the video recording.

20 (2) Furnish a copy of the audio or video recording to that other  
21 party on receipt of payment of the reasonable cost of making that  
22 copy of the recording.

23 (g) If the testimony at the deposition is recorded both  
24 stenographically *by a certified shorthand reporter*, and by audio  
25 or video technology, the stenographic transcript is the official  
26 record of that testimony for the purpose of the trial and any  
27 subsequent hearing or appeal.

28 (h) (1) The requesting attorney or party appearing in propria  
29 persona shall timely pay the deposition officer or the entity  
30 providing the services of the deposition officer for the transcription  
31 or copy of the transcription described in subdivision (b) or (c), and  
32 any other deposition products or services that are requested either  
33 orally or in writing.

34 (2) This subdivision shall apply unless responsibility for the  
35 payment is otherwise provided by law or unless the deposition  
36 officer or entity is notified in writing at the time the services or  
37 products are requested that the party or another identified person  
38 will be responsible for payment.

1 (3) This subdivision does not prohibit or supersede an agreement  
2 between an attorney and a party allocating responsibility for the  
3 payment of deposition costs to the party.

4 (4) The requesting attorney or party appearing in propria  
5 persona, upon the written request of a deposition officer who has  
6 obtained a final judgment for payment of services provided  
7 pursuant to this subdivision, shall provide to the deposition officer  
8 an address that can be used to effectuate service for the purpose  
9 of Section 708.110 in the manner specified in Section 415.10.

10 (i) For purposes of this section, “deposition product or service”  
11 means any product or service provided in connection with a  
12 deposition that qualifies as shorthand reporting, as described in  
13 Section 8017 of the Business and Professions Code, and any  
14 product or service derived from that shorthand reporting.

15 (j) *For purposes of this section, “certified shorthand reporter”*  
16 *has the same meaning as Section 8018 of the Business and*  
17 *Professions Code.*

18 SEC. 4. Section 69957 of the Government Code is amended  
19 to read:

20 69957. (a) If an official reporter or an official reporter pro  
21 tempore is unavailable to report an action or proceeding in a court,  
22 subject to the availability of approved equipment and equipment  
23 monitors, the court may order that, in a limited civil case, or a  
24 misdemeanor or infraction case, the action or proceeding be  
25 electronically recorded, including all the testimony, the objections  
26 made, the ruling of the court, the exceptions taken, all arraignments,  
27 pleas, and sentences of defendants in criminal cases, the arguments  
28 of the attorneys to the jury, and all statements and remarks made  
29 and oral instructions given by the judge. A transcript derived from  
30 an electronic recording *transcribed by a certified shorthand*  
31 *reporter* may be utilized whenever a transcript of court proceedings  
32 is required. Transcripts derived from electronic recordings shall  
33 include a designation of “inaudible” or “unintelligible” for those  
34 portions of the recording that contain no audible sound or are not  
35 discernible. The electronic recording device and appurtenant  
36 equipment shall be of a type approved by the Judicial Council for  
37 courtroom use and shall only be purchased for use as provided by  
38 this section. A court shall not expend funds for or use electronic  
39 recording technology or equipment to make an unofficial record  
40 of an action or proceeding, including for purposes of judicial

1 notetaking, or to make the official record of an action or proceeding  
2 in circumstances not authorized by this section.

3 (b) Notwithstanding subdivision (a), a court may use electronic  
4 recording equipment for the internal personnel purpose of  
5 monitoring the performance of subordinate judicial officers, as  
6 defined in Section 71601 of the Government Code, hearing officers,  
7 and temporary judges while proceedings are conducted in the  
8 courtroom, if notice is provided to the subordinate judicial officer,  
9 hearing officer, or temporary judge, and to the litigants, that the  
10 proceeding may be recorded for that purpose. An electronic  
11 recording made for the purpose of monitoring that performance  
12 shall not be used for any other purpose and shall not be made  
13 publicly available. Any recording made pursuant to this subdivision  
14 shall be destroyed two years after the date of the proceeding unless  
15 a personnel matter is pending relating to performance of the  
16 subordinate judicial officer, hearing officer, or temporary judge.

17 (c) Prior to purchasing or leasing any electronic recording  
18 technology or equipment, a court shall obtain advance approval  
19 from the Judicial Council, which may grant that approval only if  
20 the use of the technology or equipment will be consistent with this  
21 section.

22 (d) *For purposes of this section, “certified shorthand reporter”*  
23 *has the same meaning as Section 8018 of the Business and*  
24 *Professions Code.*